

E-132, 299/SA-90-36 ORDER AFTER RECONSIDERATION DECLINING TO  
INITIATE ENFORCEMENT ACTION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
Cynthia A. Kitlinski  
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Norma McKanna  
Patrice M. Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint of  
People's Cooperative Power  
Association, Inc. Against the  
City of Rochester Regarding  
Extension of Service to  
Intersections of 37th Street,  
N.E. and East River Road and  
37th Street, N.E. and North  
Broadway

ISSUE DATE: April 19, 1991

DOCKET NO. E-132, 299/SA-90-36

ORDER AFTER RECONSIDERATION  
DECLINING TO INITIATE  
ENFORCEMENT ACTION

**PROCEDURAL HISTORY**

On March 9, 1990 the Commission issued its ORDER REQUIRING CESSATION OF PROVISION OF SERVICE AND REQUESTING ENFORCEMENT ACTION BY THE ATTORNEY GENERAL in this case. In that Order the Commission found that the City of Rochester had knowingly and intentionally violated the assigned service area statutes and an Order of the Commission by providing electric service to two intersections within the assigned service area of People's Cooperative Power Association (People's). In the same Order, the Commission referred the violation to the Attorney General for enforcement proceedings under Minn. Stat. §§ 216B.57 et seq. (1990).

The City filed a petition for reconsideration, claiming it was entitled to serve the intersections under a previously overlooked 1982 agreement with People's. The Commission granted reconsideration for purposes of allowing careful review of the agreement and solicited comments from all parties. ORDER GRANTING RECONSIDERATION AND ESTABLISHING COMMENT PERIOD (April 16, 1990). The parties to the proceeding were and are the City, People's, and the Department of Public Service (the Department).

After reviewing the comments of the parties, the Commission found that the 1982 agreement raised contested issues of material fact identical to some of the issues being litigated in contested case proceedings in another docket, In the Matter of the Application of the City of Rochester, Minnesota to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc., Docket No. E-132, 299/SA-88-996 (the 996 docket). To promote administrative efficiency, the Commission deferred final action on People's complaint until the conclusion of those contested case proceedings. The Commission also asked the Administrative Law Judge hearing the 996 docket to make specific findings of fact on

the effect of the 1982 agreement on service rights to the 37th Street intersections.<sup>1</sup>

On October 1, 1990 the Administrative Law Judge issued her FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDED ORDER in the 996 docket. She found that service rights to the 37th Street intersections did not pass to the City under the 1982 agreement. The Commission, in an Order dated December 28, 1990, adopted the Administrative Law Judge's findings of fact, with technical corrections. 996 Docket, Docket No. E-132, 299/SA-88-996, INTERIM ORDER DETERMINING 1975 SERVICE AREA BOUNDARIES, DETERMINING SERVICE AREA CHANGES SINCE 1975, AND REFERRING SERVICE AREA VIOLATION TO THE ATTORNEY GENERAL (December 28, 1990).

On April 9, 1991 the Commission resumed its consideration of the 37th Street intersections complaint. All parties appeared and agreed that the sole remaining issue was whether the Commission should refer the City's actions in providing service to the 37th Street intersections to the Attorney General for enforcement proceedings. None of the parties advocated referral.

#### **FINDINGS AND CONCLUSIONS**

The Commission agrees with the parties that referring this matter to the Attorney General for enforcement proceedings would no longer serve any useful purpose. When the Commission first decided to refer the matter, the City appeared to be disregarding Commission Orders on service area matters. As the Commission explained in the March 9, 1990 Order:

This complaint is the nineteenth service area dispute between these two utilities to come before the Commission since April 1988. In eighteen of these proceedings the City claimed or sought the right to serve customers in areas designated as People's' exclusive service territory on the official service area maps. This longstanding pattern of conflict over the City's desire to expand its service area led the Commission to issue the Order discussed above [which prohibited the City from extending service within People's' assigned service area].

The City's extension of service to these intersections in the face of this Order, and the history it represents, constitutes a knowing and intentional violation of the Order and of the statutes it interpreted. The Commission will refer this matter to the Attorney General for penalty proceedings under Minn. Stat. § 216B.57 et seq.

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<sup>1</sup> ORDER REQUESTING THE ADMINISTRATIVE LAW JUDGE TO MAKE SPECIFIC FINDINGS OF FACT AND DEFERRING ACTION PENDING RECEIPT OF THOSE FINDINGS OF FACT AND GIVING NOTICE OF COMMISSION INTENT TO CONSIDER THESE FINDINGS IN RELATED DOCKET, this docket number, (June 4, 1990).

ORDER REQUIRING CESSATION OF PROVISION OF SERVICE AND  
REQUESTING ENFORCEMENT ACTION BY THE ATTORNEY GENERAL,  
this docket, (March 9, 1990).

It continues to be clear that the service extensions at issue were knowing and intentional violations of the service area statutes and a previous Commission Order. Since the March 9, 1990 Order, however, City compliance with Commission Orders has improved markedly. The City has complied with recent Orders promptly and completely. It has not extended service under questionable circumstances in recent months; in fact, it has sought Commission approval before serving areas where its right to serve was unclear. It has moved to resolve, without further litigation, district court enforcement proceedings brought under earlier Commission Orders. Counsel for the City has assured the Commission that these actions are the result of a conscious and permanent change in City policy. People's and the Department have stated that their dealings with the City confirm this claim.

Under these circumstances, the Commission concludes it would serve no useful purpose to refer the service extensions in this case for enforcement proceedings. The primary purpose of past referrals was to obtain consistent compliance with Commission Orders. Consistent compliance has now been obtained. It is therefore neither necessary or appropriate to subject Rochester's taxpayers and ratepayers to the expense of further enforcement proceedings. The Commission therefore declines to refer this matter to the Attorney General at this time.

ORDER

1. The Commission declines to refer the City of Rochester's extension of service to the intersections of 37th Street, Northeast and East River Road and 37th Street, Northeast and North Broadway to the Attorney General for enforcement proceedings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)